

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

DANIEL GARRETT,

Plaintiff,

v.

THOMAS AMMONS, Warden, and
GARLAND HUNT,

Defendants.

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1:07-CV-175 (WLS)

ORDER

Before the Court is a Report and Recommendation from United States Magistrate Judge Richard L. Hodge (Doc. No. 17), filed August 6, 2008. It is recommended that Plaintiff's motions for default judgment (Doc. Nos. 11, 14) be denied. Plaintiff has filed an objection to the Recommendation (Doc. No. 18) and Defendants have filed a response to the objection. (Doc. No. 20). Plaintiff has further filed an untimely response to the Defendants response to the objection. (Doc. No. 21)

Plaintiff concedes that Defendants have filed a timely waiver of service, but argues that since the Defendants have yet to file an answer they are in default. As correctly pointed out by Defendants, when they timely responded to Plaintiff's motion for default judgment, Defendants' time to file an answer was tolled until after the ruling on Plaintiff's motion for default. Fed.R.Civ.P. 12; 42 U.S.C. § 1997e(g)(2).

Upon full consideration of the record, the Court finds that said Recommendation (Doc. No. 17) should be and hereby is, **ACCEPTED, ADOPTED** and made the order of this Court for reason of the findings and reasons set out therein and for the findings and reasons set out herein. Accordingly, Plaintiff's motions for default judgment against the individual Defendants (Doc. Nos. 11, 14) is **DENIED**.

SO ORDERED, this 5th day of September, 2008.

/s/W. Louis Sands
W. Louis Sands, Judge
United States District Court